

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY PAUL SMITH,

Plaintiff,

v.

MUNICIPALITY OF FRESNO COUNTY,  
et al.,

Defendants.

No. 2:21-cv-1992 DJC AC P

ORDER

Plaintiff, a former state prisoner proceeding pro se, seeks relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Dispositive motions are before the court. See ECF Nos. 135, 144 (parties' motions for summary judgment). Recently, however, several orders issued by the court and sent to plaintiff have been returned as undeliverable.

For the reasons stated below, plaintiff will be given a *single* opportunity to file a change of address form with this court. In addition, given the circumstances, plaintiff will also be given a final opportunity to file a non-prisoner application with the court as well as a proper response to defendants' motion for summary judgment. Finally, the Clerk of Court will be directed to send a copy of the docket and certain court orders to plaintiff, and defendants will be ordered to send plaintiff a copy of their motion for summary judgment if they have not already done so.

1 I. RELEVANT BACKGROUND

2 On January 20, 2023, defendants filed a motion for summary judgment. ECF No. 135.  
3 On March 6, 2023, because plaintiff had not filed a response to defendants' motion, he was  
4 ordered either to show cause why this matter should not be dismissed or, in the alternative, to file  
5 a response to defendants' motion. ECF No. 136. In addition, plaintiff was ordered to complete  
6 and file a non-prisoner in forma pauperis application with the court. Id. at 2. He was given 30  
7 days to do both. Id.

8 On March 20, 2023, the court's order was returned to it marked "Undeliverable,  
9 Attempted not known, Unable to forward." Since then, five other orders issued by the court have  
10 been returned (see docket indicating same). At the same time, plaintiff has continued to file  
11 documents in this case. See ECF Nos. 138, 143, 144, 147, 148. To date, however, plaintiff has  
12 not filed the non-prisoner in forma pauperis application, nor has he filed a response to defendants'  
13 motion for summary judgment.<sup>1</sup>

14 II. DISCUSSION

15 On close review of the timeline of docket entries, it appears that plaintiff has failed to file  
16 a change of address form with this court. This may be why court orders sent to plaintiff since  
17 March of this year have been returned and consequently, why plaintiff has not responded to any  
18 of them.

19 The last address of record the court has for plaintiff is one on Butternut Avenue in  
20 Bakersfield, California. See ECF Nos. 132, 134 (change of address forms). However it appears  
21 that since March of 2023, plaintiff may have been receiving mail at an address on W.  
22 Whitesbridge Avenue in Kerman, California. See ECF Nos. 138 at 1; 143 at 1 (return addresses  
23 on documents filed in this court). Documents filed by defendant since March 27, 2023, indicate  
24 that they have been serving plaintiff at both addresses. See, e.g., ECF No. 140 at 3 (defendants'  
25 proof of service regarding deposition transcript); ECF No. 146 at 5 (defendants' proof of service  
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27 <sup>1</sup> On March 22, 2023, a filing by plaintiff which included a general and vague "opposition" to  
28 defendants' motion for summary judgment was docketed. ECF No. 138. The motion, however,  
as well as defendants' reply to it, were eventually disregarded by the court. ECF No. 149 at 3-4.

1 regarding opposition to plaintiff's second motion for summary judgment).

2 It is plaintiff's responsibility to file change of address forms with the court and to do so  
3 consistently. See Local Rule 183(b). Plaintiff's failure to do so in this case could have resulted  
4 in the court dismissing this matter for failure to prosecute. See id. Furthermore, the court is not  
5 obligated to try to determine plaintiff's last valid address by combing through recent documents  
6 he has filed. Despite these facts, because plaintiff has been fairly diligent in attempting to move  
7 this case forward, the court will presume that plaintiff's failure to file a change of address notice  
8 with the court after his last move was an oversight, and he will be given a *single* opportunity to  
9 file one with the court. In addition, the Clerk of Court will be directed to send plaintiff a copy of  
10 the docket, as well as copies of all orders issued by the court since March 6, 2023. The  
11 documents will be ordered sent to the address on Whitesbridge Avenue as well as to the Butternut  
12 Avenue address that is currently listed on the docket. Finally, because it appears that defendants  
13 only served their motion for summary judgment on plaintiff at the Butternut address (see ECF  
14 No. 135-12 at 2) (defendants' proof of service form), defendants will be ordered to serve it at the  
15 Whitesbridge Avenue address if they have not already done so.

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. The Clerk of Court shall send plaintiff copies of the following:

- 18 a. A copy of the docket;
- 19 b. The court's in forma pauperis application for a non-prisoner; and
- 20 c. All orders issued by the court, beginning with the order issued on March 6, 2023  
21 (ECF No. 136).

22 The documents shall be sent to the Butternut Avenue address listed on file *and* to the W.  
23 Whitesbridge address listed at ECF No. 143 at 1.

24 2. Within *seven* days from the date of this order, plaintiff shall file a change of address  
25 form with the court. See Local Rule 183(b).

26 3. Within *thirty* days from the date of this order, plaintiff shall file:

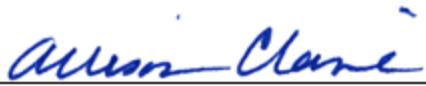
- 27 a. A non-prisoner in forma pauperis application, and
- 28 b. A proper response to defendants' motion for summary judgment that is consistent

1 with the Federal Rules of Civil Procedure and Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998).

2 4. Within *seven* days from the date of this order, defendants shall serve plaintiff with a  
3 copy of their motion for summary judgment filed January 20, 2023 (ECF No. 135 et seq.), *if* they  
4 have not already done so.

5 **Plaintiff is cautioned that absent exigent circumstances, no extensions of the**  
6 **deadlines specified above will be granted. Plaintiff is further cautioned that failure to**  
7 **timely file all three documents with the court is likely to result in a recommendation that**  
8 **this matter be dismissed.**

9 DATED: September 18, 2023

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11 ALLISON CLAIRE  
12 UNITED STATES MAGISTRATE JUDGE  
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